

CHAPTER 9-13: INCLUSIONARY ZONING

9-13-1: Findings.....	1
9-13-2: Purpose.....	1
9-13-3: General Inclusionary Housing Requirements	2
(a) Scope of Chapter	2
(b) Prohibitions.....	2
(c) Asset Limitations for Income Eligible Households.....	2
(d) Permanently Affordable Ownership Units.....	2
(e) Transition to Inclusionary Zoning Requirements	2
(f) Permanently Affordable Unit Types	3
(g) Reference Information.....	4
9-13-4: Inclusionary Obligation Based Upon Size of Project.....	4
(a) Developments of Five or More Dwelling Units.....	4
(b) Developments Containing Four Dwelling Units or Less	4
(c) Minimum Sizes for Permanently Affordable Units.....	4
9-13-5: Cash-in-Lieu Equivalent for a Single Permanently Affordable Unit.....	5
(a) Cash-in-Lieu Equivalent.....	5
(b) Contribution-in-Lieu Provisions Affecting Certain Developments Containing a Single Dwelling Unit.....	5
(c) Annual Escalator.....	6
(d) Affordable Housing Fund Established.....	6
9-13-6: Off-Site Inclusionary Zoning Option	6
(a) On-Site and Off-Site Inclusionary Zoning Requirements	6
(b) Variance to On-Site Construction Requirement.....	6
(c) Requirements for Fulfilling Obligation Off-Site	7
9-13-7: Affordable Housing Requirements For Rental Projects.	8
(a) Manner of Compliance.....	8
(b) Determination of Rental Rates for Permanently Affordable Units	8
9-13-8: Affordable Housing Requirements For Ownership Units.....	9
(a) Maximum Sales Price for Permanently Affordable Units.....	9
(b) Average Price within a Development	9
(c) Maximum Income for Purchasers of Ownership Units	9
(d) Approved Purchasers for Permanently Affordable Units.....	9
(e) Purchasers of Permanently Affordable Units Required to Reside in those Units.....	9
(f) Rental Restrictions for Permanently Affordable Ownership Units.....	9
(g) Resale Restrictions Applicable to Permanently Affordable Units	10
9-13-9: Requirements Applicable to all Required Permanently Affordable Units	11
(a) Construction Timing	11
(b) Residents Eligible for Permanently Affordable Units	11
(c) Required Agreements	11
(d) Good Faith Marketing Required	11
9-13-10: No Taking of Property Without Just Compensation	11
(a) Purpose.....	11
(b) Request for Review	11
(c) City Manager Review	11
(d) Administrative Hearing	12

9-13-11: Administrative Regulations.....	12
9-13-12: Monitoring	12

CHAPTER 9-13: INCLUSIONARY ZONING

9-13-1: FINDINGS

- (a) A diverse housing stock is necessary in this community in order to serve people of all income levels. Based upon the review and consideration of recent housing studies, reports and analysis, it has become clear that the provisions of this chapter are necessary in order to preserve some diversity of housing opportunities for the city's residents and working people.
- (b) The program defined by this chapter is necessary to provide continuing housing opportunities for very low-, low- and moderate-income and working people. It is necessary to help maintain a diverse housing stock and to allow working people to have better access to jobs and upgrade their economic status. It is necessary in order to decrease social conflict by lessening the degree of separateness and inequality. The increasingly strong employment base in this region, combined with the special attractiveness of Boulder, its increasing University related population and its environmentally sensitive urban service boundaries, all combine to make the continued provision of decent housing options for very low-, low- and moderate-income and working people in Boulder a difficult but vital objective. The regional trend toward increasing housing prices will, without intervention, result in inadequate supplies of affordable housing here for very low-, low- and moderate-income and working people. This in turn will have a negative effect upon the ability of local employers to maintain an adequate local work force.
- (c) It is essential that appropriate housing options exist for University students, faculty and staff so that the housing needs of University related populations do not preclude non-University community members from finding affordable housing.
- (d) A housing shortage for persons of very low-, low- and moderate-income is detrimental to the public health, safety and welfare. The inability of such persons to reside within the city negatively affects the community's jobs/housing balance and has serious and detrimental transportation and environmental consequences.
- (e) Because remaining land appropriate for residential development within the city is limited, it is essential that a reasonable proportion of such land be developed into housing units affordable to very low-, low- and moderate-income residents and working people. This is particularly true because of the tendency, in the absence of intervention, for large expensive housing to be developed within the city which both reduces opportunities for more affordable housing and contributes to a general rise in prices for all of the housing in the community, thus exacerbating the scarcity of affordable housing within the city.
- (f) The primary objective of this chapter is to obtain on-site, privately owned, permanently affordable units. Some provisions of this chapter provide for alternatives to the production of such on-site units. Those provisions recognize the fact that individual site and economic factors can make on-site production less desirable than the alternatives for particular developers. However, the intent and preference of this chapter is that wherever possible, permanently affordable units constructed pursuant to these provisions be located on-site and be privately produced, owned and managed.

9-13-2: PURPOSE

The purposes of this Section are to:

- (a) Implement the housing goals of the Boulder Valley Comprehensive Plan;
- (b) Promote the construction of housing that is affordable to the community's workforce;

- (c) Retain opportunities for people that work in the city to also live in the city;
- (d) Maintain a balanced community that provides housing for people of all income levels; and
- (e) Insure that housing options continue to be available for very low-income, low-income, and moderate-income residents, for special needs populations and for a significant proportion of those who both work and wish to live in the city.

9-13-3: GENERAL INCLUSIONARY HOUSING REQUIREMENTS

(a) **SCOPE OF CHAPTER**

No person shall fail to conform to the provisions of this chapter for any new development which applies for a development approval or building permit for a dwelling unit after the effective date of this chapter. No building permit or certificate of occupancy shall be issued, nor any development approval granted, which does not meet the requirements of this chapter.

(b) **PROHIBITIONS**

No person shall sell, rent, purchase, or lease a permanently affordable unit created pursuant to this chapter except to income eligible households and in compliance with the provisions of this chapter.

(c) **ASSET LIMITATIONS FOR INCOME ELIGIBLE HOUSEHOLDS**

Income eligible tenants and purchasers of affordable units shall be subject to reasonable asset limitations set by the city manager. The city manager will establish maximum asset limitation requirements for tenants and purchasers of affordable units in order to accomplish the purposes of this chapter. The standard that the city manager will use to set the asset limitation is that the housing be available to people who, without assistance, would have difficulty marshaling the financial resources to obtain appropriate housing within the city.

(d) **PERMANENTLY AFFORDABLE OWNERSHIP UNITS**

Except as otherwise provided in this chapter, permanently affordable units that are required for developments that are intended for owner occupancy shall be provided as follows:

- (1) **On-Site:** Permanently affordable units that are required to be constructed on-site shall be owner occupied in the same proportion as the dwelling units intended for sale as owner occupancy that are not permanently affordable within the development.
- (2) **Off-Site:** Permanently affordable units that the developer may be allowed to provide off-site shall also be owner occupied in the same proportion as the dwelling units intended for sale as owner occupancy that are not permanently affordable within the development.

(e) **TRANSITION TO INCLUSIONARY ZONING REQUIREMENTS**

Developments of the type described in this Subsection shall be permitted to develop utilizing no more than one of the following provisions:

- (1) **Developments Approved Prior to 1995:** Developments which received development plan approvals prior to October 5, 1995, shall conform to the provisions of this chapter or, in the alternative, may develop in compliance with the conditions of their previously issued development plan approvals so long as the construction of dwelling units are completed by December 31, 2001.
- (2) **City Subsidized Developments:** Developments subject to agreements with the city executed prior to the effective date of this chapter in order to receive Community

Housing Assistance Program, HOME or Community Development Block Grant funds may either:

- (A) Develop in compliance with affordable housing and restricted housing agreements executed prior to the effective date of this chapter and provide restricted units as required pursuant to ordinances in effect at the time such developments were approved;
 - (B) Enter into a new agreement with the city manager to allow the development to retain funding pursuant to the earlier agreements, provide permanently affordable units as required pursuant to the earlier agreements and law, be relieved of all obligations to provide restricted units, and provide ten percent additional permanently affordable units as such units are defined by this chapter; or
 - (C) Refund all monies received pursuant to such agreements and agree that contracts providing for the provision of such funding shall be void. The development shall then develop in compliance with the provisions of this chapter.
- (3) **Development with Reservation Agreements:** Developments for which reservation agreements have been entered prior to the effective date of this chapter may develop in compliance with the affordable housing and restricted housing conditions contained in those agreements if building permits for the dwelling units are applied for by December 31, 2001.
- (4) **Developments Subject to Annexation Agreements:** Developments subject to affordable housing requirements imposed by annexation contracts entered into prior to the effective date of this chapter may develop in conformity with those contract provisions.
- (5) **Developments with Pending Project Approval Applications:** Developers of developments for which applications were filed prior to the effective date of this chapter may request that the city manager vary the standards of this chapter to allow for development in conformity with the approvals. The city manager will grant such variance requests by finding that the proposed variance will result in benefits to the city that are equivalent to the benefits that would otherwise have been created by the application of the provisions of this chapter.
- (6) **Moderate Income Housing Program:** Any development subject to Ordinance 4638, "Moderate Income Housing," as amended, and which has not entered into a separate agreement with the city manager to fulfill those requirements prior to the effective date of this chapter shall be relieved of its obligations under Ordinance 4638, as amended, and shall be subject to the requirements of this chapter.
- (f) **PERMANENTLY AFFORDABLE UNIT TYPES**
The distribution of dwelling unit types that meet the permanently affordable unit requirements of this Section shall be as follows:
- (1) **Single Family:** In single family detached dwelling unit developments, the required on-site permanently affordable units shall also be single family detached units.
 - (2) **Mixed Unit Type:** In developments with the included single-family detached units, attached units, multi-family apartment type units, or other dwelling unit types, the required on-site permanently affordable units shall be comprised of the different unit types in the same proportion as the dwelling units that are not permanently affordable within the development.

- (3) **Alternative Distribution Ratios:** The city manager is to approve different unit distributions among the permanently affordable unit types if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter, or if approved pursuant to a site review pursuant to [Section 9-2-14](#), "Site Review," B.R.C. 1981, results in a better design than not using the distribution of units provided for in this Section.

(g) **REFERENCE INFORMATION**

Whenever this chapter refers to information generated by HUD but no such information is generated by or available from that agency, the city manager shall generate appropriate information which can be utilized in the enforcement of the provisions of this chapter.

Ordinance No. 7212 (2002).

9-13-4: INCLUSIONARY OBLIGATION BASED UPON SIZE OF PROJECT

(a) **DEVELOPMENTS OF FIVE OR MORE DWELLING UNITS**

Any development containing five or more dwelling units is required to include at least 20 percent of the total number of dwelling units within the development as permanently affordable units.

(b) **DEVELOPMENTS CONTAINING FOUR DWELLING UNITS OR LESS**

Any development containing four dwelling units or less may comply with the obligations of this chapter either by including one permanently affordable unit within the project, by dedicating an off-site permanently affordable unit, by dedicating land that meets the requirements set forth in [Section 9-13-6](#), "Off-Site Inclusionary Zoning Option," B.R.C. 1981, or by providing a cash-in-lieu financial contribution to the city's affordable housing fund established by [Section 9-13-5](#), "Cash-in-Lieu Equivalent for a Single Permanently Affordable Unit," B.R.C. 1981.

(c) **MINIMUM SIZES FOR PERMANENTLY AFFORDABLE UNITS**

The minimum size for permanently affordable units shall be as follows:

- (1) The average floor area of the detached permanently affordable units in a development shall be a minimum of forty-eight percent of the average floor area of all the non-permanently affordable units which are part of the same development up to a maximum average size of 1,200 square feet of floor area.
- (2) The average floor area of the attached permanently affordable units in a development shall be a minimum of eighty percent of the average floor area of all the non-permanently affordable units which are part of the same development up to a maximum average size of 1,200 square feet of floor area.
- (3) The city manager will permit a decrease in size of the finished floor area, set forth in paragraph (1) above, if the dwelling unit is increased in size by 2 square feet of unfinished and potentially habitable space for each square foot of finished square foot of floor area that is decreased, up to a maximum of 400 unfinished square feet, upon finding that the unfinished space will be designed and configured in such a way as to allow for a simple conversion of the space at some future time. The factors that the city manager will consider to determine whether a simple conversion is possible include, without limitation, an adequate foundation, sound structural components, floor to ceiling heights, weather resistant roofs, appropriate exits, and window placement.
- (4) The city manager is authorized to enter into agreements allowing permanently affordable units to constitute a smaller percentage of the total floor area contained within non-permanently affordable units at a given project if doing so would accomplish additional

benefits for the city consistent with the purposes of this chapter or to prevent an unlawful taking of property without just compensation in accordance with [Section 9-13-10](#), "No Taking of Property Without Just Compensation," B.R.C. 1981.

9-13-5: CASH-IN-LIEU EQUIVALENT FOR A SINGLE PERMANENTLY AFFORDABLE UNIT.

(a) CASH-IN-LIEU EQUIVALENT

Whenever this chapter permits a cash-in-lieu contribution as an alternative to the provision of a single permanently affordable unit, the cash-in-lieu contribution shall be as follows:

- (1) Detached Dwelling Units:** For each unrestricted detached dwelling unit, the cash-in-lieu contribution for the calendar year of 2000 shall be the lesser of \$13,200.00 or \$55.00 multiplied by 20 percent of the total floor area of the unrestricted unit. The cash-in-lieu contribution will be adjusted annually as set forth in Subsection (c) below.
- (2) Attached Dwelling Units:** For each unrestricted attached dwelling unit, the cash-in-lieu contribution for the calendar year of 2000 shall be the lesser of \$12,000.00 or \$50.00 multiplied by 20 percent of the total floor area of the unrestricted unit. The cash-in-lieu contribution will be adjusted annually as set forth in Subsection (c) below.

(b) CONTRIBUTION-IN-LIEU PROVISIONS AFFECTING CERTAIN DEVELOPMENTS CONTAINING A SINGLE DWELLING UNIT

A lot owner that intends to construct a single dwelling unit that will be the primary residence of the owner for not less than one year immediately following the issuance of a certificate of occupancy shall meet the standards set forth in [Section 9-13-4](#), "Inclusionary Obligation Based Upon Size of Project," B.R.C. 1981, or meet the following standards:

- (1) Designation of Home as a Permanently Affordable Unit:** The owner shall make the unit a permanently affordable unit, except that such initial owner does not have to meet income or asset qualifications imposed by this chapter. The income and asset limitations shall apply to subsequent owners of the affordable unit.
- (2) Alternative Method of Paying Cash-in-Lieu Contribution:** If the owner of a unit described in this Subsection chooses to comply with inclusionary zoning obligations imposed by this chapter by making an in-lieu contribution as set forth in [Section 9-13-4](#), "Inclusionary Obligation Based Upon Size of Project," B.R.C. 1981, the owner shall have the option of deferring payment of that contribution until such time as the property is conveyed to a subsequent owner, subject to the following:
 - (A)** The amount of the cash-in-lieu contribution shall be increased or decreased to reflect the percentage of change, if any, between the actual valuation determined by the Boulder County Assessor of the property upon which the unit is constructed following completion of such construction and the most recent actual valuation determined by the Boulder County Assessor of the same property at the time of transfer of title to a subsequent owner.
 - (B)** The owner executes legal documents, the form and content of which are approved by the city manager, to secure the city's interest in receipt of the deferred cash-in-lieu contribution.
- (3) Alternative Methods of Compliance:** If the owner of a unit described in this Subsection chooses to comply with the inclusionary zoning obligations imposed by this chapter by utilizing an in-lieu contribution approach, the city manager shall have discretion to accept

in-lieu consideration in any form so long as the value of that consideration is equivalent to or greater than the cash-in-lieu contribution required by this chapter and the city manager determines that the acceptance of an alternative form of consideration will result in additional benefits to the city consistent with the purposes of this chapter.

- (4) **Waiver of Inclusionary Zoning Obligation for Certain Size-Restricted Developments:** The owner of a lot who constructs a single dwelling unit upon that lot may elect to be exempted from the inclusionary zoning requirements imposed by this chapter if all of the following conditions are met:

- (A) **Limitation on Eligible Lots:** The dwelling unit is a single detached dwelling unit built on a lot created prior to October 5, 1995;
- (B) **Primary Residence of Lot Owner:** The dwelling unit is intended to be the primary residence of the owner and, following completion of the unit, the lot owner lives in the unit continuously for no less than one year immediately following the issuance of a certificate of occupancy;
- (C) **Maximum Size:** The floor area of the single detached residential unit does not exceed 1,600 square feet;
- (D) **Restriction on Size:** Restrictive covenants or other legal documents, the form and content of which are acceptable to the city manager, are executed to ensure that the single detached residential unit remains size restricted in perpetuity to a floor area not exceeding 1,600 square feet; and
- (E) **One-Time Exemption:** No person shall be permitted to use the exemption set forth in this Subsection more than one time.

(c) **ANNUAL ESCALATOR**

The city manager is authorized to adjust the cash-in-lieu contribution on an annual basis to reflect changes in the median sale price for detached and attached housing, using information provided by Boulder County Assessor records for the City of Boulder.

(d) **AFFORDABLE HOUSING FUND ESTABLISHED**

The city manager shall establish an affordable housing fund for the receipt and management of permanently affordable unit cash-in-lieu financial contributions. Monies received into that fund shall be utilized solely for the construction, purchase, and maintenance of affordable housing and for the costs of administering programs consistent with the purposes of this chapter.

Ordinance No. 7212 (2002).

9-13-6: OFF-SITE INCLUSIONARY ZONING OPTION

(a) **ON-SITE AND OFF-SITE INCLUSIONARY ZONING REQUIREMENTS**

Except as otherwise provided in this chapter, in developments that require more than one permanently affordable ownership unit, the developer must construct a minimum of one-half of the required permanently affordable units on-site.

(b) **VARIANCE TO ON-SITE CONSTRUCTION REQUIREMENT**

The city manager is authorized to enter into agreements to allow a greater percentage of the required permanently affordable unit obligation to be satisfied off-site if the city manager finds:

- (1) Securing such off-site units will accomplish additional benefits for the city consistent with the purposes of this chapter; or

- (2) If zoning, environmental, or other legal restrictions make a particular level of on-site compliance unfeasible.

(c) **REQUIREMENTS FOR FULFILLING OBLIGATION OFF-SITE**

To the extent that a developer is authorized to fulfill some portion of the permanently affordable housing obligation off-site, the developer may satisfy that obligation through any combination of the following alternate means:

- (1) **In-Lieu Contribution:** To the extent permitted by this chapter, developers may satisfy permanently affordable unit obligations by making contributions to the city's affordable housing fund in an amount that is calculated according to the standards set forth in [Subsection 9-13-5\(a\)](#), "Cash-in-Lieu Equivalent," B.R.C. 1981.
- (2) **Land Dedication:** To the extent permitted by this chapter, permanently affordable unit obligations may be satisfied by dedication of land in-lieu of providing affordable housing on-site. Land dedicated to the city or its designee shall be located in the City of Boulder. The value of land to be dedicated in satisfaction of this alternative means of compliance shall be determined, at the cost of the developer, by an independent appraiser, who shall be selected from a list of certified appraisers provided by the city, or by such alternative means of valuation as to which a developer and the city may agree. The land dedication requirement may be satisfied by:
- (A) **Land at Equivalent Value:** Conveying land to the city or its designee that is of equivalent value to the cash-in-lieu contribution that would be required under [Section 9-13-5](#), "Cash-in-Lieu Equivalent for a Single Permanently Affordable Unit," B.R.C. 1981, plus an additional fifty percent, to cover costs associated with holding, developing, improving, or conveying such land; or
- (B) **Land to Construct Equivalent Units:** Conveying land to the city or its designee that is of equivalent value (as of the date of the conveyance) to that land upon which required units would otherwise have been constructed (upon completion of construction). Land so deeded must be zoned such as to allow construction of at least that number of units for which the obligation of construction is being satisfied by the dedication of the land.
- (C) **Dedication of Existing Units:** To the extent permitted by this chapter, permanently affordable unit obligations may be satisfied by restricting existing dwelling units which are approved by the city as suitable affordable housing dwelling units through covenants, contractual arrangements, or resale restrictions, the form and content of which are acceptable to the city manager. Off-site units shall be located within the City of Boulder. The restriction of such existing units must result in the creation of units that are of equivalent value, quality, and size of the permanently affordable units which would have been constructed on-site if this alternative had not been utilized. Where a proposed development consists of ownership units, units created under this Section shall be ownership units. The value of dwelling units created pursuant to this Section as a way of meeting the permanently affordable unit requirement shall be determined, at the expense of the developer, by an appraiser who shall be selected by the developer from a list of certified appraisers provided by the city or by such alternative means of valuation as to which a developer and the city may agree.

9-13-7: AFFORDABLE HOUSING REQUIREMENTS FOR RENTAL PROJECTS.

(a) MANNER OF COMPLIANCE

For developments containing rental units, permanently affordable unit obligations for such units shall be met in the following manner:

- (1) **On-Site or Off-Site Units Permitted:** All permanently affordable unit obligations of rental housing projects may be met through on-site units, off-site units, or by any combination of on-site and off-site units, which satisfy such permanently affordable unit obligation. Off-site units shall be equivalent in size and quality of on-site units that otherwise would be required by this chapter.
- (2) **Conversion of Rental Developments to Ownership Units:** A rental housing project that is not owned by the Housing Authority of the City of Boulder or its agents or in which the city does not have an interest through the Housing Authority of the City of Boulder or a similar agency consistent with Section 38-12-301, C.R.S., that chooses to fulfill its permanently affordable unit obligations off-site shall enter into a covenant or agreement with the city. The covenant or other agreement shall be in a form acceptable to the city manager and shall insure that the number of permanently affordable units that would have been provided if the project was an ownership development with off-site units used to meet the total inclusionary zoning requirements will be provided in the event that the proposed rental development converts to an ownership development within five years of the final unit in the development receiving a certificate of occupancy. Such covenant or agreement shall provide for the appropriate adjustment to the inclusionary zoning requirements of this chapter.
- (3) **Variance to Permanently Affordable Housing Requirement for Rental Projects:** The city manager may enter into agreements with the developers of rental housing projects such that permanently affordable unit obligations are satisfied in ways other than those listed in this chapter upon a finding by the city manager that such alternative means of compliance would result in additional benefits to the city which would further the objectives of this chapter.

(b) DETERMINATION OF RENTAL RATES FOR PERMANENTLY AFFORDABLE UNITS

If a developer of a rental housing project chooses to meet the permanently affordable unit requirements imposed by this chapter through the provision of on-site or off-site affordable rental housing, affordability of rental units shall be determined as follows:

- (1) **Maximum Rent:** Rents charged for permanently affordable units in any one project must, on average, be affordable to households earning ten percentage points less than the HUD low-income limit for the Boulder PMSA, with no unit renting at a rate which exceeds affordability to a household earning more than the HUD low-income limit for the Boulder PMSA.
- (2) **Maximum Income for Tenants:** No single household in a permanently affordable unit project shall have an income which exceeds the HUD low-income limit for the Boulder PMSA.

Ordinance No. 7212 (2002).

9-13-8: AFFORDABLE HOUSING REQUIREMENTS FOR OWNERSHIP UNITS.

(a) MAXIMUM SALES PRICE FOR PERMANENTLY AFFORDABLE UNITS

The maximum sale price for an affordable ownership unit shall be set by the city on a quarterly basis.

(b) AVERAGE PRICE WITHIN A DEVELOPMENT

The prices charged for permanently affordable units in any one project shall average a price affordable to a household earning the HUD low-income limit, with no unit exceeding a price affordable to a household earning ten percentage points more than the HUD low-income limit for the Boulder PMSA.

(c) MAXIMUM INCOME FOR PURCHASERS OF OWNERSHIP UNITS

An ownership unit shall be sold to, or purchased by an income eligible household that meets the asset limitations established pursuant to this chapter.

(d) APPROVED PURCHASERS FOR PERMANENTLY AFFORDABLE UNITS

A developer or owner shall select a low-income purchaser after completing a good faith marketing and selection process approved by the city manager. Upon request, the city may provide the developer or owner of a permanently affordable unit with a list of households certified by the city as eligible to purchase the unit. However, a developer or property owner may select a low-income purchaser who is not on a furnished list so long as the city can verify the purchaser's income and asset eligibility and the unit is sold at an affordable price as described in this chapter.

(e) PURCHASERS OF PERMANENTLY AFFORDABLE UNITS REQUIRED TO RESIDE IN THOSE UNITS

A purchaser of a permanently affordable unit shall occupy the purchased unit as a primary residence, except subject to rental restrictions for permanently affordable ownership units.

(f) RENTAL RESTRICTIONS FOR PERMANENTLY AFFORDABLE OWNERSHIP UNITS

No person shall rent a permanently affordable ownership unit, except as follows:

- (1) Unit Initially Occupied:** The owner shall initially reside in the permanently affordable ownership unit for a period of not less than five years.
- (2) Notice:** The owner shall provide notice to the city prior to renting of the permanently affordable ownership unit of its intent to rent the unit.
- (3) Limitation on Lease Period:** The owner shall not rent or lease the entirety of the affordable unit for one or more periods aggregating not more than one year out of every seven-year period.
- (4) Lease Documentation:** Any lease or rental agreement for the lease or rental of a permanently affordable ownership unit pursuant to this Section shall be in writing.
- (5) Prior Approval:** Before the date upon which it becomes effective, a copy of any lease or rental agreement for a permanently affordable unit shall be provided to the city, along with those documents which the city finds to be reasonably necessary in order to determine compliance with this Section.
- (6) Scope:** The provisions of this Section shall apply to all rental or lease arrangements under which any person, other than the owner, his or her spouse, his or her domestic partner and dependent children or parents, occupies any part of the property for any

valuable consideration, whether that agreement is called a lease, rental agreement, or something else.

- (7) **Rental of a Bedroom Permitted:** At all other times, the only part of a permanently affordable unit which an owner may rent or lease is a bedroom, subject to all requirements of city ordinances concerning the renting of residential property.

(g) **RESALE RESTRICTIONS APPLICABLE TO PERMANENTLY AFFORDABLE UNITS**

All permanently affordable ownership units developed under this chapter shall be subject to the following resale restrictions:

- (1) **Approved Purchasers for Resale of Permanently Affordable Units:** A seller of a permanently affordable unit must select a low-income purchaser by a method that complies with the good faith marketing and selection process approved by the city manager. At the request of an applicant, the city will provide the seller with the description of a process that meets this requirement. Upon request, the city may provide a potential seller of a permanently affordable unit with a list of households certified by the city as eligible to purchase the unit. All purchasers of permanently affordable units shall be part of income eligible households.
- (2) **Resale Price for Permanently Affordable Units:** The resale price of any permanently affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:
- (A) Customary closing costs and costs of sale;
 - (B) Costs of real estate commissions paid by the seller if a licensed real estate agent is employed and if that agent charges commissions at a rate customary in Boulder County;
 - (C) Consideration of permanent capital improvements installed by the seller; and
 - (D) The resale price may include an inflationary factor or shared appreciation factor as applied to the original sale price pursuant to rules as may be established by the city manager to provide for such consideration. In developing rules, the city manager shall consider the purposes of this chapter, common private, non-profit, and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing. In the event that the city has not adopted rules that contemplate a particular arrangement for the use of an inflationary factor or shared appreciation factor, the city manager is authorized to approve a resale price formula that is consistent with the purposes of this chapter, common private, non-profit, and governmental lending practices, as well as any applicable rules or guidelines issued by federal or state agencies affecting the provision or management of affordable housing.
- (3) **No Special Fees Permitted:** The seller of a permanently affordable unit shall not levy or charge any additional fees or any finder's fee nor demand any other monetary consideration other than provided in this chapter.
- (4) **Deed Restriction Required:** No person offering a permanently affordable unit for sale shall fail to lawfully reference in the Grant Deed conveying title of any such unit, and record with the county recorder, a covenant or Declaration of Restrictions in a form approved by the city. Such covenant or Declaration of Restrictions shall reference applicable contractual arrangements, restrictive covenants, and resale restrictions as are necessary to carry out the purposes of this chapter.

Ordinance No. 7212 (2002).

9-13-9: REQUIREMENTS APPLICABLE TO ALL REQUIRED PERMANENTLY AFFORDABLE UNITS

(a) CONSTRUCTION TIMING

The construction of required permanently affordable units in any development shall be timed such that they may be marketed concurrently with or prior to the market-rate units in that development. However, the city manager is authorized to enter into other phasing agreements if doing so would accomplish additional benefits for the city consistent with the purposes of this chapter.

(b) RESIDENTS ELIGIBLE FOR PERMANENTLY AFFORDABLE UNITS

No person shall sell, lease or rent a permanently affordable unit except to income eligible households.

(c) REQUIRED AGREEMENTS

Prior to approval of any development review pursuant to [Sections 9-2-15](#), “Use Review,” and [9-2-14](#), “Site Review,” B.R.C. 1981, or a subdivision pursuant to Chapter 9-12, “Subdivisions,” B.R.C. 1981, applicants for residential development projects shall have entered into permanently affordable housing agreements with the city. Such agreements shall specify the number, type, location, approximate size, and projected level of affordability of permanently affordable units. Prior to application for a building permit for a residential development project, developers shall execute such restrictive covenants and additional agreements, in a form acceptable to the city, as are necessary to carry out the purposes of this chapter. No development review application or subdivision application shall be approved in the absence of proof of the execution of required agreements and covenants. No building permit application shall be accepted in the absence of proof of the execution of required agreements and covenants.

(d) GOOD FAITH MARKETING REQUIRED

All sellers or owners of permanently affordable units shall engage in good faith marketing efforts each time a permanently affordable unit is rented or sold such that members of the public who are qualified to rent or purchase such units have a fair chance to become informed of the availability of such units. Every such seller or owner shall submit a public advertising plan targeting the appropriate income range for approval by the city manager.

9-13-10: NO TAKING OF PROPERTY WITHOUT JUST COMPENSATION

(a) PURPOSE

It is the intention of the city that the application of this chapter not result in an unlawful taking of private property without the payment of just compensation.

(b) REQUEST FOR REVIEW

Any applicant for the development of a housing project who feels that the application of this chapter would effect such an unlawful taking may apply to the city manager for an adjustment of the requirements imposed by this chapter.

(c) CITY MANAGER REVIEW

If the city manager determines that the application of the requirements of this chapter would result in an unlawful taking of private property without just compensation, the city manager may

alter, lessen or adjust permanently affordable unit requirements as applied to the particular project under consideration such that there is no unlawful uncompensated taking.

(d) ADMINISTRATIVE HEARING

If after reviewing such application, the city manager denies the relief sought by an applicant, the applicant may request an administrative hearing within which to seek relief from the provisions of this chapter. Any such hearing shall be conducted pursuant to the procedures prescribed by [Chapter 1-3](#), “Quasi-Judicial Hearings,” B.R.C. 1981. At such hearing, the burden of proof will be upon the applicant to establish that the fulfillment of the requirements of this chapter would affect an unconstitutional taking without just compensation pursuant to applicable law of the United States and the State of Colorado. If it is determined at such administrative hearing that the application of the requirements of this chapter would affect an illegal taking without just compensation, the city manager shall alter, lessen or adjust permanently affordable unit requirements as applied to the particular project under consideration such that no illegal uncompensated taking takes place.

9-13-11: ADMINISTRATIVE REGULATIONS

To the extent the city manager deems necessary, rules and regulations pertaining to this chapter will be developed, maintained and enforced in order to assure that the purposes of this chapter are accomplished.

9-13-12: MONITORING

Prior to July 1, 2002, the city manager will present sufficient information to the city council so that it can effectively review the operation of this chapter and determine whether any of the provisions of this chapter should be amended, adjusted or eliminated. Such information should be sufficient to allow the city council to evaluate the following:

- (a)** The effectiveness of this chapter in contributing to the purposes of this chapter;
- (b)** Any demographic trends affecting housing affordability indicate the need for amendments or alterations to the provisions of this chapter;
- (c)** The level of integration of the provisions of this chapter with other tools being utilized by the city as part of a comprehensive approach toward obtaining the goals of this chapter.